Supreme Court of the United States

October Term, 1955

No. 348

DAVID RINES, individually and as administrator of Estate of Lucy L. Rines,
Appellant,
v.
THE HONORABLE JUSTICES OF THE SUPERIOR COURT
and
WILLIS A. NEAL, as he is clerk of the Superior Court in and for the County of Norfolk,
Respondents.

No. 11,495
On the Docket of the Supreme Judicial Court of the Commonwealth of Massachusetts.

DAVID RINES, Administrator of the Estate of Lucy L. Rines,
Appellant,
v.
MARY GILMORE,
Respondent.

DAVID RINES,
Appellant,
v.
BETH ISRAEL HOSPITAL ASSOCIATION,
Respondent.

DAVID RINES,
Appellant,
v.
ESTHER BURGEN,
Respondent.

DAVID RINES,
Appellant,
v.
MARY GILMORE,
Respondent.

No. 11,508
On the Docket of the Supreme Judicial Court of the Commonwealth of Massachusetts.

PETITION FOR REHEARING

The appellant prays that this Court grant rehearing of its order, dated November 7, 1955, dismissing, for want of a substantial federal question, his two appeals in the above-entitled suit.

This Petition for Rehearing is filed because of the tremendous importance (apparently not appreciated by this Court) of the issues raised by these appeals to litigants in the Commonwealth of Massachusetts. As is made plain on pages 8 to 13 of the Jurisdictional Statement in No. 694, October Term, 1954, the appellant happens to be only one of a large number of litigants in the Commonwealth of Massachusetts who:

First, are denied their right to trial by jury (granted to other litigants) by an arbitrarily directed verdict of a judge of the Superior Court; and

Secondly, are then denied their right (granted to other litigants) to review of this arbitrary action, in the Supreme Judicial Court, merely because of the refusal of the judge, prejudiced though he may be in favor of or against one side or the other to the litigation, either to allow or disallow a bill of exceptions (see the last complete paragraph on page 11 of the said Jurisdictional Statement, No. 694). In the present instance, the prejudice was so open that the judge of the Superior Court excluded the appellant from a hearing that he conducted in secret, in a locked hearing room (see the record of *Rines, Administrator v. Justices of the Superior Court*, 346 U. S. 919, rehearing denied, 347 U. S. 908, discussed on pages 25 and 26 of the Jurisdictional Statement in the said No. 694).

Litigants are usually compelled helplessly to submit to this practice because of the expense and effort involved

in bringing the matter before this Court. The present appellant, on the other hand, has not permitted either expense or effort to stand in his way of testing the validity of this practice, and he submits that this Court ought to assume jurisdiction of these appeals, in order to settle, once and for all, whether this practice in the Commonwealth of Massachusetts is or is not violative of the Fourteenth Amendment.

It will be just as important for this Court to decide formally that this practice in Massachusetts is not violative of the Fourteenth Amendment as that it is so violative. This is because such a decision will put the matter at rest, for all time, in the future, and litigants will thereafter know that it will be futile for them to go to any effort and expense further to question the matter.

A mere dismissal of these appeals, upon the ground of the want of a substantial federal question, can not have that effect. Such mere dismissal, it is believed, does not comply with the intention of Congress, conferring upon this Court jurisdiction over these appeals. Attention is invited to the dissenting opinion, *Linehan v. Waterfront Commission of New York Harbor*, 347 U. S. 439: "The Congress carved out a group of cases, of which this is one, that comes here as of right".

In the present case, not only has the judge of the Superior Court directed verdicts, and then refused either to allow or disallow any of four bills of exceptions, but also he has dismissed all bills of exceptions, and thereafter, without a hearing, and without receiving evidence, he has issued an order (page 10 of the Jurisdictional Statement)

preventing the appellant from even filing exceptions to this order, thereby shutting off all possibility of review.

The ground alleged for this order was that the said exceptions were "frivolous, unimportant, or superfluous"; but the appellant has proved, as is even admitted by the Supreme Judicial Court, that the said exceptions were not "frivolous, unimportant, or superfluous", but were absolutely essential to saving the appellant's rights in the litigation. (The said judge, however, was only following the precedent of another unfortunate litigant, *Thorndike, petitioner*, 257 Mass. 409, approved by the Supreme Judicial Court, and cited in its opinion, see page 22 of the Jurisdictional Statement.)

The appellant has many times charged prejudice against the said judge of the Superior Court. He first made that charge at an early stage of the litigation, but the Supreme Judicial Court ignored that charge, and this Court dismissed the appellant's appeals, *Rines, Administrator v. Justices of the Superior Court*, 346 U. S. 919, rehearing denied, 347 U. S. 908, *supra*. The appellant was therefore compelled to continue to submit to the prejudices of this judge, though he continually repeated the charge of prejudice, until he has now been driven out of Court altogether.

It is the appellant's contention that no judge of the Superior Court, whether or not biased, should be given the power that he now has arbitrarily and capriciously to direct a verdict, then refuse either to allow or disallow a bill of exceptions, and finally even to dismiss all bills of exceptions, without hearing, and without receiving evidence. It is submitted that any statute conferring such power is violative of the Fourteenth Amendment.

It is respectfully submitted, therefore, that this Court ought to reconsider its order dismissing the appeals in this suit.

Respectfully submitted,

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Certificate of Counsel

I hereby certify that the foregoing petition is presented in good faith, and not for purposes of delay.

DAVID RINES.